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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF FRESNO  
BY \_\_\_\_\_ DEPUTY

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Gerawan Farming, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF FRESNO**

GERAWAN FARMING, INC., a California  
corporation,

Petitioner/Plaintiff

vs.

CALIFORNIA AGRICULTURAL LABOR  
RELATIONS BOARD, a California state  
agency;

GENEVIEVE SHIROMA, an individual and  
Chairwoman of the Agricultural Labor  
Relations Board;

CATHRYN RIVERA-HERNANDEZ, an  
individual and Board Member of the  
Agricultural Labor Relations Board;

HERBERT MASON, an individual and Board  
Member of the Agricultural Labor Relations  
Board;

J. ANTONIO BARBOSA, an individual and  
Executive Secretary of the Agricultural Labor  
Relations Board;

Respondents/Defendants.

UNITED FARM WORKERS OF AMERICA,  
a labor union,

Real Party-in-Interest.

Case No.

13CE0601408

**VERIFIED PETITION FOR WRIT OF  
ADMINISTRATIVE MANDATE OR IN  
THE ALTERNATIVE WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

**[Code of Civil Procedure § 1094.5; Code of  
Civil Procedure § 1085; Code of Civil  
Procedure § 1060]**

Petitioner/Plaintiff Gerawan Farming, Inc. (“Gerawan” or the “Company”) alleges on personal knowledge, except where expressly noted as to particular allegations made on information and belief:

## I. INTRODUCTION

1. On April 16, 2013, pursuant to a demand by the United Farm Workers of America ("UFW" or the "Union"), the California Agricultural Labor Relations Board ("Board" or the "ALRB"), ordered Gerawan into compulsory arbitration of a collective bargaining agreement, under the "Mandatory Mediation and Conciliation" procedures of Labor Code section 1164 *et seq.* of the California Agricultural Labor Relations Act ("the ALRA") (the "MMC Statute"). MMC is a hybrid mediation/arbitration process which requires one decision maker to mediate and adjudicate a collective bargaining agreement ("CBA"). This "mediator"/arbitrator is empowered to dictate every term of the contract between Gerawan and its thousands of employees – from how much the workers are paid to whether they may be fired if they refuse pay dues to the UFW. Gerawan and its workers have no right to reject or accept this agreement.

2. The UFW does not have a contract which requires arbitration of terms or conditions for Gerawan's employees. There is no agreement between the Union and Gerawan. That is because the UFW made no meaningful effort to negotiate an agreement after it was certified by the ALRB in 1992. Since early 1995, and until late 2012, it made no effort to contact Gerawan or its workers. The UFW has not stood for election since 1990. It abandoned the workers.

3. In October 2012, the Union resurfaced and demanded negotiations with Gerawan. Gerawan agreed to negotiate. Gerawan participated in ten negotiation sessions beginning in January 2013 – until the Union abruptly suspended discussions and demanded that the Board impose Mandatory Mediation. The Order disregarded the requirement that a demand for MMC “may be made only in cases” where “the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain.” CAL. LAB. CODE § 1164.11(a). The UFW’s contention (accepted without any analysis by the Board), is that

1 an "initial demand" was made in July 1992. This treats this critical 12 month requirement as  
2 nothing more than a calendaring event, whereby the Union need only send a letter requesting  
3 bargaining, and thereafter make no good faith effort to bargain, or to even respond to the  
4 employer's request for a proposal – as was the case, here.

5 4. The Board ignored the requirement that an employer may not be compelled into  
6 MMC unless it committed an unfair labor practice relating to the remedial purpose of the MMC  
7 Statute, which is intended to address egregious cases of bad faith collective bargaining by  
8 employers. CAL. LAB. CODE § 1164.11(b). The undisputed evidence is that Gerawan never  
9 resisted negotiations with UFW after it was certified by the Board in 1992.

10 5. The Order determined that the UFW's 20-year abandonment of Gerawan's  
11 workers was irrelevant to its standing to invoke MMC. MMC was not designed to empower a  
12 union which abdicated its obligations to negotiate to compel an employer into mandatory  
13 arbitration. CAL. LAB. CODE § 1164(a).

14 6. These requirements are central to the statutory scheme. They are intended to  
15 insure that an employer "goes into mandatory mediation *only* as the result of its own conduct."  
16 *In re Pictsweet Mushroom Farms*, 29 A.L.R.B. No. 3, at 9 (2003) (emphasis original). The Order  
17 ignores its own precedent and the plain language of the MMC Statute.

18 7. This Petition raises two issues of first impression with significant ramifications for  
19 workers and employers in the business of agriculture in the State of California. First, whether the  
20 Board exceeded its jurisdiction under the MMC Statute by compelling arbitration without the  
21 required showing under section 1164 *et seq.* Second, whether the MMC Statute violates due  
22 process by impermissibly combining confidential mediation and adjudicative powers in one  
23 decision maker, and then immunizing that decision maker's *ex parte* "mediation" communications  
24 from discovery, challenge, or judicial review.

25 8. To reach these questions, the Court must first resolve a simple but vitally  
26 important issue of constitutional law: whether section 1164.9 of the MMC Statute impermissibly  
27 strips the Superior Court of its grant of original jurisdiction under article VI, section 10 of the  
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1 California Constitution. The ALRB claims that the Superior Court has no power to review,  
2 reverse, or enjoin its Order. A century ago, the California Supreme Court considered an almost  
3 identically-worded provision of the Public Utilities Code. *See Pac. Tel. & Tel. Co. v. Eshleman*,  
4 166 Cal. 640 (1913). That statute survived for the very reason that section 1164.9 is  
5 unconstitutional: the California Constitution expressly granted the Legislature powers to limit  
6 Superior Court jurisdiction over orders of the Public Utilities Commission. The Constitution  
7 contains no such grant for the ALRB.

8 9. Last month, another Superior Court struck down a similar attempt by the  
9 Legislature to strip this Court of its original jurisdiction to hear challenges under CEQA. Citing  
10 article VI, section 10, the Court held that the statute was an “unconstitutional restriction on the  
11 jurisdiction of the . . . Superior Courts.” *Planning and Conservation League v. State of Cal.*, No.  
12 RG12-626904, slip op. at 1-2 (Alameda Super. Ct., April 9, 2013). The same conclusion is  
13 compelled in this case.

14 10. Gerawan has no recourse other than this Petition to seek immediate review of the  
15 Board’s Order, and to enjoin the Board from imposing upon it a facially unconstitutional process.  
16 The Board refused to consider Gerawan’s due process challenges, claiming that it has no  
17 authority to review the constitutionality of the MMC Statute. At the same time, the Board  
18 contends that no court may review its “interim” Order. There is nothing “interim” about the  
19 Board’s decision. The consequences of that Order are immediate and irreparable the moment this  
20 facially unconstitutional process is imposed. The injury is the infirmity of the process itself;  
21 subsequent judicial review cannot cure this injury.

22 11. The need for review is immediate. Mandatory Mediation is, by design, a highly  
23 expedited process. By statute, it requires the “mediator”/arbitrator to be selected within seven  
24 days of the Order. The mediator has 30 days to mediate and adjudicate this dispute, unless that  
25 time is extended by mutual agreement of the parties. Once the mediator declares the process  
26 “exhausted,” he has 21 days to draft the “final terms” of the collective bargaining agreement.  
27 The Board’s review of any objections to the terms and conditions of the mediator’s “report” is  
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1 discretionary and limited. That review does not provide for reconsideration of the Order. This  
2 would be futile, in any event, as Gerawan must now submit to compulsory arbitration or risk  
3 sanctions from the “mediator” – including “adverse inferences” as to the terms and conditions of  
4 the contract he will draft – if it does not participate.

5 12. That process is inherently unfair. Compulsory arbitration under section 1164  
6 requires the “mediator”/arbitrator to conduct confidential, *ex parte* discussions with the parties to  
7 persuade them to narrow or eliminate disputes concerning the terms of the collective bargaining  
8 agreement. The mediator then adjudicates “on the record” the remaining issues in dispute, and  
9 drafts the final terms of the agreement. No judge, arbitrator, or administrative agency would be  
10 permitted to engage in *ex parte* communications with an interested party, or require a party to  
11 reveal its confidential settlement positions without their consent. Under section 1164, the  
12 mediator is required to engage in such communications. This violates due process.

13 13. Gerawan has no means to challenge these *ex parte* or confidential  
14 communications. Under the Board’s regulations, all “off the record” communications with the  
15 mediator are privileged and absolutely protected from discovery. Such *ex parte* discussions  
16 would constitute the most relevant evidence of any bias or misconduct, however unintended, in  
17 the adjudicative phase of this extraordinary hybrid process. But neither Gerawan nor any court  
18 may discover what was said, or evaluate the influence of these contacts on the decision maker’s  
19 partiality or rulings. Gerawan is thus thrust into a binding adjudication without the means to  
20 challenge the fairness of the decision or the impartiality of the decision maker. Due process  
21 requires both a fair hearing and a neutral adjudicator. This process deprives Gerawan of both of  
22 these basic protections.

23 14. The circumstances are extraordinary. The Board’s order compels Gerawan to  
24 participate in an expedited and unconstitutional procedure based on a statute that purports to strip  
25 this Court of its power to review the legality of the Board’s decision. Regardless of Gerawan’s  
26 participation in this structurally unfair process, the statutorily-mandated outcome of MMC is a  
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1 Board order imposing contractual terms and conditions upon Gerawan and thousands of its  
2 employees. Except for a judicial determination enjoining this process, Gerawan has no exit.

3 15. Gerawan therefore brings this Complaint and Petition for writ of mandate to  
4 adjudicate its rights to seek judicial review of the Board's Order. Gerawan seeks the following  
5 determinations. First, whether this Court has the ability to review the Board's Order. Second,  
6 whether the ALRB was correct that the criteria set forth in sections 1164(a) and 1164.11 have  
7 been met. Third, whether the MMC process is facially invalid under the due process clause of the  
8 U.S. and California Constitutions.

9 16. Gerawan respectfully requests that the Court issue a writ of administrative  
10 mandate, or in the alternative a writ of mandate, to require the Board to vacate its April 16, 2013  
11 Order.

## 12 **II. THE ALRB DECISION AT ISSUE IN THIS PETITION**

13 17. In July 1992, the ALRB certified the UFW as the exclusive bargaining  
14 representative of Gerawan's agricultural workers, following a contested election in 1990. In the  
15 ensuing 20 years, the Union made no good faith effort to represent Gerawan's agricultural  
16 workers, or to attempt to negotiate a collective bargaining agreement. After an initial meeting  
17 with Gerawan in early 1995, during which the UFW promised to provide Gerawan with a specific  
18 bargaining proposal, the Union effectively disappeared. It made no effort to negotiate a  
19 collective bargaining agreement, to raise grievances on behalf of Gerawan's agricultural workers,  
20 or even to contact Gerawan. On information and belief, the Union did not contact Gerawan's  
21 workers during this period. It did not request access to Gerawan's property, propose any wage  
22 increases or changes in conditions of employment, or seek to extend its certification beyond the  
23 initial year as required under the ALRA. The Union has not stood for election since 1990. The  
24 UFW cannot contend that Gerawan impeded its ability to represent the workers over the better  
25 part of the last two decades. Gerawan did nothing to interfere with the collective bargaining  
26 rights of its workers. The UFW abdicated its obligations to represent Gerawan's employees,  
27 thus violating the public rights it was entrusted to protect under the ALRA.  
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1           18.     On October 12, 2012, the Union resurfaced, and sent a letter to Gerawan  
2 requesting negotiations and information about Gerawan's employees. Gerawan promptly  
3 responded. It provided the requested information and agreed to participate in negotiations. It  
4 raised objections based on the Union's dereliction of its statutory obligations, and asked the UFW  
5 how it would explain to its workers the Union's near twenty-year absence from the negotiations  
6 table. The Union said it had no legal obligation to offer an explanation. The Union claimed the  
7 perpetual and exclusive power, until decertified, to bargain for Gerawan's employees, including  
8 the authority to negotiate an agreement that requires Gerawan to fire any worker who refuses to  
9 pay union dues. After ten bargaining sessions, the Union suspended discussions, and filed a  
10 demand with the Board on March 29, 2013 to compel Gerawan into mandatory arbitration  
11 pursuant to section 1164.

12           19.     Entitled "Contract Dispute Resolution," section 1164 removes from farmers and  
13 represented employees the power to reach mutually agreeable terms for wages, hours, and other  
14 terms and conditions of employment. This so-called "Mandatory Mediation and Conciliation"  
15 process was intended to address egregious misconduct by employers of agricultural workers who  
16 obstructed a certified union's efforts to negotiate a contract. It is an extreme remedy that  
17 undermines the general law (set forth in Labor Code section 1155.2(a)) that no party may be  
18 compelled to make particular concessions in collective bargaining. It is a narrow exception to the  
19 bedrock principle underlying the constitutionality of collective bargaining between employers  
20 and unionized employees: freedom of negotiation and voluntary agreement to contract terms.

21           20.     To invoke "Mandatory Mediation and Conciliation," a Union must satisfy the  
22 factual predicates under section 1164.11. First, there must be a prior adjudication by the ALRB  
23 that the employer had committed a prior "unfair labor practice," or "ULP." Second, the parties  
24 failed to reach an agreement over at least a 12 month period after an "initial demand" to  
25 negotiate, and 90 days after a "renewed demand" to bargain. Third, that the union demanding  
26 Mandatory Mediation is authorized, as the exclusive bargaining representative for the employees,  
27 to invoke this process on their behalf.  
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1           21.     On five days' notice, Gerawan filed an answer to the Union's demand. Gerawan  
2 presented the Board with a detailed analysis as to why this procedure should not be imposed. In a  
3 cursory, five-page Order, the Board rejected or ignored these arguments, without any reasoned  
4 analysis.

5           22.     After conceding that the 12 month bargaining requirement was intended to "give  
6 the parties time to negotiate over an initial contract before mediation could be required," Order at  
7 3, the Board concluded that the "statutory language" imposes no obligation on the Union to  
8 bargain in good faith before invoking the MMC process. This statutory interpretation is facially  
9 unsound and inconsistent with the ALRA's core obligation of mutual good faith bargaining.  
10 CAL. LAB. CODE § 1155.2(a). The MMC statute expressly refers to the parties having "failed" to  
11 reach agreement. For failure to exist, there must first be an attempt. The UFW made no attempt,  
12 and thus no "failure" could be found.

13           23.     The Board then concluded that any unfair labor practice, regardless as to when it  
14 occurred, or what it involved, was sufficient to compel Gerawan into the MMC process. The  
15 Board ignored the fact that Gerawan has never been found to have committed any unfair labor  
16 practice at any time after the Union was certified by the ALRB. Instead, it determined that two  
17 ULPs from nearly a quarter century ago met the statutory prerequisite. One involved allegations  
18 concerning the 1990 election; the other related to the closure of certain worker housing units  
19 during the pendency of Gerawan's objections to the 1990 election. Neither relate to CBA  
20 negotiations with a certified union, for the simple reason that the UFW was not certified by the  
21 Board at the time these violations occurred; by statute an employer cannot contract with an  
22 uncertified labor organization. CAL. LAB. CODE § 1159. These ULPs have nothing to do with the  
23 remedial purposes of section 1164.

24           24.     The UFW's two-decade absence raises fundamental questions as to whether the  
25 Union forfeited its standing as the exclusive bargaining representative to bind Gerawan and its  
26 workers to an agreement. The Board deemed this abandonment irrelevant. Having granted the  
27 Union the monopoly power to negotiate on behalf of Gerawan's workers, the Board now claims  
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1 to lack the authority to limit its own grant of certification to the UFW. This is wrong as a matter  
2 of law, wrong as a matter of basic fairness to Gerawan and its workers, and inconsistent with the  
3 Board's obligation to protect the workers' freedom to choose their own bargaining  
4 representatives.

5 25. The Board has an obligation to suspend or revoke its certification to a union that  
6 has engaged in evasive or dilatory conduct. This Order rewards the Union for avoiding its duties,  
7 and permits the UFW to claim the power to bind thousands of Gerawan employees – the vast  
8 majority of whom were not employed at Gerawan when the Union last stood for election in 1990  
9 – without their knowledge or consent.

### 10 **III. JURISDICTION AND VENUE**

11 26. Venue in this Court is proper pursuant to Code of Civil Procedure, section 393(b),  
12 because Gerawan has its principal place of business in the County of Fresno and was and is being  
13 injured by the acts and omissions of the Respondents/Defendants in the County of Fresno.

14 27. The California Constitution, article VI, section 10, provides that “[t]he Supreme  
15 Court, courts of appeal, superior courts, and their judges . . . have original jurisdiction in  
16 proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.”  
17 Further, article VI, section 10 provides that “Superior Courts have original jurisdiction in all  
18 causes except those given by statute to other trial courts.” No provision exists in the State  
19 Constitution enabling the legislature to limit or divest the judiciary's original jurisdiction over  
20 ALRB orders. Without such a provision, article VI, section 10 of the California Constitution  
21 takes precedence over statutes purporting to strip jurisdiction from the Superior Courts. *See*  
22 *Planning and Conservation League v. State of Cal.*, No. RG12-626904, slip op. at 1-2 (Alameda  
23 Super. Ct., April 9, 2013) (declaring the jurisdictional restriction in California Public Resources  
24 Code section 21185(a)(1) to be unconstitutional and void for this reason). Therefore, Labor Code  
25 section 1164.9 does not bar this Court from entertaining Gerawan's writ petition. Further, Labor  
26 Code section 1164.9 has no effect on this Court's jurisdiction to hear challenges to the  
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1 constitutionality of legislative enactments. Indeed, the ALRB expressly disclaims any such  
2 jurisdiction for itself.

3         28. The Board's Order was a final order, because it definitively resolved the question  
4 of whether the Union was entitled to invoke MMC, and it imposed an obligation on Gerawan that  
5 inflicted an actual, concrete injury. The Order adjudicates that Gerawan is no longer entitled to  
6 the statutory protection that it may not be compelled to agree to a proposal or required to make a  
7 concession in its negotiations. *See* CAL. LAB. CODE § 1155.2(a). The Order imposed upon  
8 Gerawan the obligation to participate in MMC, and left nothing to Gerawan except to comply,  
9 and to pay one-half of the mediator's fees. Moreover, Gerawan will be mediating its dispute with  
10 the UFW with the knowledge that any issue that it cannot resolve will be adjudicated by the  
11 mediator/arbitrator and become an order of the Board. *See* CAL. LAB. CODE § 1164.3(b).  
12 Gerawan will therefore be "negotiating" under duress, such that its refusal to participate in a  
13 facially unconstitutional process will not bar the mediator from making whatever findings and  
14 conclusions he deems appropriate. Gerawan is, moreover, obligated to participate, as any failure  
15 to comply with discovery requests issued pursuant to the mediator's subpoena authority permits  
16 the mediator to sanction Gerawan, and to draw "adverse inferences" against Gerawan, as part of  
17 the mediator's determination of the wages, hours, and conditions in the agreement. CAL. CODE  
18 REGS. tit. 8, § 20406(d). Accordingly, the Board's Order imposed upon Gerawan immediate and  
19 adverse consequences warranting review. Gerawan should not be required to undergo a facially  
20 unconstitutional process before obtaining its day in court, as the infirmity of the process is itself  
21 the due process injury.

22         29. Even if the Board's order was not "final," this Court is justified in hearing the  
23 Petition, and has jurisdiction to consider the causes of action in this complaint. Courts have held  
24 that agency action may be challenged when the complaining party raises a colorable claim that  
25 the decision violates a constitutional right. Gerawan alleges that the MMC process is  
26 unconstitutional because of its unacceptable admixture of mediation and arbitration powers in the  
27 "mediator." Gerawan has thus raised a colorable claim that the MMC statute is facially  
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1 unconstitutional, and that the Board's Order forcing Gerawan into mediation violates the Board's  
2 duty to act in conformity with the state and federal constitutions.

3 30. Without immediate review, Gerawan would suffer irreparable harm from this  
4 ongoing violation of its rights, because it will be forced to participate in an unconstitutional  
5 process, and to expend significant resources in a litigation-like proceeding that includes discovery  
6 and presentation of witnesses, all of which will impose massive costs on the company. Gerawan  
7 lacks a plain, speedy, and adequate remedy, in the ordinary course of law, to address these  
8 violations of its rights without the issuance of the requested mandate.

9 31. The Board lacks authority to grant Gerawan an adequate remedy. The MMC  
10 Statute provides only for narrow challenges to specific portions of the mediator's report. *See*  
11 CAL. LAB. CODE § 1164.3(a). It contains no provision for challenge to the order directing the  
12 parties to MMC. Moreover, even if such review were available, the Board has no power to grant  
13 Gerawan relief. As the Board noted in its Order, pursuant to article III, section 3.5 of the  
14 California Constitution, administrative agencies such as the ALRB have no authority to declare a  
15 statute unconstitutional and void, or to refuse to enforce a statute based on its alleged  
16 unconstitutionality.

#### 17 **IV. PARTIES**

18 32. Gerawan is, and at all times mentioned in the petition was, a corporation duly  
19 organized and existing under the laws of the State of California, with its registered address at  
20 7108 N. Fresno St., Suite 450, Fresno, California 93720, United States. Gerawan is a family-  
21 owned and operated farm.

22 33. Gerawan is informed and believes, and on this basis alleges, that the ALRB is an  
23 administrative agency of the State of California created pursuant to the ALRA, with authority to  
24 determine disputes regarding the existence of any of the prerequisites for referral to mandatory  
25 mediation and conciliation pursuant to Labor Code section 1164 *et seq.*, and to issue an order  
26 directing the parties to mandatory mediation and conciliation of their issues, with its address at  
27  
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1 1325 J Street, Suite 1900, Sacramento, California 95814-2944, United States. The ALRB is a  
2 part of the Labor and Workforce Development Agency.

3 34. Respondent/Defendant Genevieve Shiroma is Chairwoman of the Board.  
4 Gerawan is informed and believes, and on this basis alleges, that the Chairwoman's  
5 responsibilities include exercising the authority of the Board to determine disputes regarding the  
6 existence of any of the prerequisites for referral to mandatory mediation and conciliation pursuant  
7 to Labor Code section 1164 *et seq.*, and to issue an order directing the parties to mandatory  
8 mediation and conciliation of their issues.

9 35. Respondent/Defendant Cathryn Rivera-Hernandez is a Member of the Board.  
10 Gerawan is informed and believes, and on this basis alleges, that her term of office expired on  
11 January 1, 2013. Gerawan is further informed and believes, and on that basis alleges, that the  
12 Governor submitted her re-nomination for this position to the State Senate on January 31, 2013,  
13 and that to date, the State Senate has not confirmed her appointment as required by Labor Code  
14 section 1141. Gerawan is informed and believes, and on this basis alleges, that a Board  
15 Member's responsibilities include exercising the authority of the Board to determine disputes  
16 regarding the existence of any of the prerequisites for referral to mandatory mediation and  
17 conciliation pursuant to Labor Code section 1164 *et seq.*, and to issue an order directing the  
18 parties to mandatory mediation and conciliation of their issues.

19 36. Respondent/Defendant Herbert Mason is a Member of the Board. Gerawan is  
20 informed and believes, and on this basis alleges, that a Board Member's responsibilities include  
21 exercising the authority of the Board to determine disputes regarding the existence of any of the  
22 prerequisites for referral to mandatory mediation and conciliation pursuant to Labor Code section  
23 1164 *et seq.*, and to issue an order directing the parties to mandatory mediation and conciliation  
24 of their issues.

25 37. Respondent/Defendant J. Antonio Barbosa is the Executive Secretary of the  
26 Board, appointed by the ALRB to perform its duties. *See* CAL. LAB. CODE § 1145. Gerawan is  
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1 informed and believes, and on that basis alleges, that in that capacity, Barbosa executes the  
2 ALRB's directives in enforcing Labor Code section 1164, *et seq.*

3 38. Gerawan is informed and believes, and on this basis alleges, that Real Party-in-  
4 Interest UFW is a labor union with its principal office at the address of 29700 Woodford-  
5 Tehachapi Road, Keene, California 93531, United States.

6 39. At all relevant times, Gerawan is informed and believes, and on this basis alleges,  
7 that each of the Respondent/Defendants has been the agent or employee of the remaining  
8 Respondent/Defendants, and has acted within the course and scope of such agency or  
9 employment. The Respondent/Defendants who are individuals are sued in their official  
10 capacities.

## 11 **V. BACKGROUND FACTS**

12 40. Fresno-based Gerawan Farming has been family-owned and operated since 1938.  
13 It is a market leader in the cultivation and sale of apricots, peaches, plums, and nectarines.  
14 Gerawan employs approximately 5,100 direct-hire workers, including those who are highly  
15 trained at harvesting, sorting, and packing fruit.<sup>1</sup> Table grape harvesting employees are paid  
16 substantially more than the average industry wage and they are compensated on a sliding scale  
17 based on the quality of the work. The best packers, for instance, earn more than \$20.00 an hour.  
18 Tree fruit harvesting employees are paid from \$1.00 to \$2.00 more per hour than workers  
19 employed by Gerawan's competitors. These practices have garnered Gerawan numerous awards,  
20 including being named the number one stone fruit (drupe) grower from 2004 to 2010 and being  
21 recognized by the U.S. Department of Agriculture for superior quality control practices.

22 41. On July 8, 1992, following a contested run-off election in 1990, the UFW was  
23 certified by the ALRB as the exclusive bargaining representative for agricultural employees of  
24 Gerawan. On or about July 21, 1992, the UFW sent Gerawan a letter requesting negotiations.  
25

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27 <sup>1</sup> The Company also annually employs approximately 6,300 farm labor contractor  
28 employees. The total numbers of direct-hire and farm labor contractor employees are based on the  
2012 employee lists provided to the UFW.

1 See Ex. A (UFW Declaration), at 6.<sup>2</sup> Gerawan responded on August 13, 1992, formally accepting  
2 the Union's offer to commence collective bargaining negotiations, expressing its desire to meet  
3 and negotiate, and requesting a proposal from the Union regarding ground rules for negotiation,  
4 and a proposed collective bargaining agreement. See Ex. B (Gerawan Answer), at 26-29. The  
5 Union did not provide the documents until November 22, 1994, more than *two years later*. Ex. B  
6 at 23, ¶ 5. At no time during this delay, or ever, did the Union request an extension of its  
7 certification beyond the 12-month period after initial certification as contemplated by Labor Code  
8 section 1155.2(b).

9 42. When it finally came, the initial written collective bargaining ("CBA") proposal  
10 provided by the Union in late 1994 was essentially a "form" agreement. It was incomplete and  
11 contained numerous conditions that did not relate to Gerawan's operations. Ex. B at 23-24, ¶ 7.  
12 It did not include a wage proposal. In February 1995, the UFW held one brief, introductory  
13 meeting with Gerawan. Ex. B. at 23, ¶ 6. At the meeting, the UFW agreed to submit a revised  
14 CBA proposal. Ex. B at 23-24, ¶ 7. It never did. Ex. B at 24, ¶ 8. Instead, the Union completely  
15 disappeared, not to be heard from again for nearly twenty years.

16 43. During that near two-decade absence, the Union stopped communicating with  
17 Gerawan; it made no requests for further discussions or bargaining. Gerawan is informed and  
18 believes, and on the basis of that information and belief alleges, that during the near two-decade  
19 absence, the Union had no contact with Gerawan employees. There were no other interactions  
20 between the Union and Gerawan relating to its status as a certified labor organization of  
21 Gerawan's agricultural workers. It did not ask to visit Gerawan's facilities or fields, offer to meet  
22 with Gerawan's owners, managers, or workers, or lodge any complaint concerning employment  
23 or working conditions at Gerawan. During that time span, it did not claim once that Gerawan  
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26 <sup>2</sup> Exhibits A, B, and C attached to this Petition and Complaint constitute the administrative  
27 record in this matter. Exhibit A is the Declaration of the UFW Requesting Mandatory Mediation  
28 and Conciliation with attached exhibits, Exhibit B is Gerawan's Answer with attached exhibits  
and a Brief In Support of the Answer, and Exhibit C is the Board's April 16, 2013 Order, with  
attached letter to the California State Mediation and Conciliation Service.

1 committed any unfair labor practice relating to a refusal to negotiate with the Union, nor did it  
2 file such a charge with the ALRB.

3 44. During the Union's long absence and abandonment of Gerawan's workers, in  
4 2002, the California Legislature enacted Labor Code section 1164 *et seq.*, which provided for  
5 mandatory interest arbitration between employers and unions representing agricultural workers.  
6 The new section was intended as a remedial measure to address situations involving obstruction  
7 by employers preventing effective collective bargaining. Despite the passage of this major  
8 legislation, the UFW still did nothing to represent Gerawan's workers for another decade, and  
9 made no effort to bargain on their behalf.

10 45. On October 12, 2012, the UFW suddenly reappeared. It sent a letter to Gerawan,  
11 advising Gerawan that the Union was the exclusive bargaining representative for its workers  
12 pursuant to the Board's certification (which had occurred before some Gerawan workers were  
13 even born), and that it was "hereby requesting negotiations." The letter further proposed to  
14 "start" negotiations in early December. *See* Ex. A at 10-11. The Union followed up with a  
15 second letter on October 30, 2012, in which it characterized its October 12 letter as a "first  
16 request" for negotiations. *See* Ex. A at 13-14.

17 46. Gerawan responded on November 2, 2012 by letter, informing the UFW that it  
18 intended to respond in good faith to the UFW's requests for information and to meet its legal  
19 obligations. *See* Ex. B at 31-32. However, in the November 2 letter and subsequent  
20 communications, Gerawan also requested an explanation from the Union for its two-decade  
21 absence and reserved its rights to challenge the Union's ability to represent its workers on that  
22 basis. *See, e.g.,* Ex. B at 31; *see also id.* at 35-36 (Dec. 29, 2012 Letter).

23 47. Gerawan and the UFW conducted ten bargaining sessions between January 17,  
24 2013 and March 29, 2013, the date on which the UFW filed its request for MMC. *See* Ex. B. at  
25 19-20, ¶ 6. The UFW's original bargaining "proposal," submitted January 12, 2013, included a  
26 sweeping reorganization of Gerawan's labor practices, including completely new procedures for  
27 hiring, recall/layoffs, filing of vacancies, promotions, a requirement that employees pay dues or  
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1 fees in order to retain their jobs, a complete overhaul of Gerawan's use of farm labor contractors  
2 and a host of other proposed provisions.

3 48. From the time it commenced negotiations to the date it filed its request for MMC,  
4 the UFW never made an economic proposal, including wages, for its proposed collective  
5 bargaining agreement. *See* Ex. B. at 19-20, ¶ 6. Because the UFW had failed to make any  
6 economic proposal, Gerawan made an initial wage proposal on March 20, 2013 to increase its  
7 base hourly rate for non-piece-rate work performed by crew employees by \$.50 per hour to \$9.50  
8 per hour and proposed to implement it in the interim, which was agreed to by the UFW on March  
9 21, 2013. *Id.*

10 49. On March 27, 2013, in response to increases being made by competitors, Gerawan  
11 increased and expanded its wage proposal by proposing to increase the base hourly rate for non-  
12 piece-rate work performed by crew employees from \$9.50 to \$10.00 per hour and to increase its  
13 cultural employees' wage rates by \$1.00 per hour over their then current wage rates. *Id.*  
14 Gerawan further proposed to implement these proposed wage increases in the interim, which was  
15 agreed to the very next day by the UFW on March 28, 2013. *Id.*

16 50. Despite these interim agreements to implement wage increases, and even though  
17 negotiations between Gerawan and the UFW had led to some resolutions and began to build  
18 towards resolving others through agreement on general concepts, on March 29, 2013, the day  
19 after it agreed to Gerawan's proposed wage increases, the UFW filed its demand for MMC,  
20 despite never having made *any* economic CBA proposal of its own. *See* Ex. A. Contrary to its  
21 own prior characterizations, the UFW now claimed that the October 12 letter was a "renewed  
22 demand" to bargain, based on the fact that it "initially requested negotiations" with Gerawan in  
23 1992 and tendered a "proposal" in 1994. *See* Ex. A at 2 ¶ 6. Based on these allegations, the  
24 UFW claimed that it has satisfied the requirements of Labor Code section 1164(a)(1), which  
25 provide for invocation of MMC after 90 days have passed since a "renewed" demand. *See* Ex. A  
26 at 2-4.

## 27 VI. STATUTORY AND REGULATORY FRAMEWORK

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1           51. Labor Code section 1164 *et seq.* provides for the “mandatory mediation and  
2 conciliation” process under the ALRA. Pursuant to this process, a certified labor union may file a  
3 declaration with the Board stating that the parties have not been able to reach an agreement and  
4 requesting that the Board order the parties to “mandatory mediation and conciliation” of their  
5 issues. CAL. LAB. CODE § 1164(a).

6           52. The declaration may be filed at any time at least 90 days after a renewed demand  
7 to bargain has been made by the labor organization if the declaration shows three requirements  
8 set out in Labor Code section 1164.11: “(a) the parties have failed to reach agreement for at least  
9 one year after the date on which the labor organization made its initial request to bargain; (b) the  
10 employer has committed an unfair labor practice, and (c) the parties have not previously had a  
11 binding contract between them.”

12           53. Where a party disputes the existence of any of the prerequisites for referral to  
13 MMC, the Board must resolve the dispute on the basis of the parties’ filings and/or upon  
14 investigation. CAL. CODE REGS. tit. 8, § 20402(c). Within 5 days, the Board must issue a  
15 decision either dismissing the petition, referring the matter to MMC, or scheduling an expedited  
16 evidentiary hearing to resolve any disputed factual issues material to the existence of any  
17 prerequisite. *Id.*

18           54. Upon issuance of the order, the process begins immediately. The parties must  
19 select a mediator within seven days. Once mediation begins, the parties have 30 days to “resolve  
20 the issues to their mutual satisfaction.” CAL. LAB. CODE § 1164(c). The process of mediation  
21 includes the presentation of witnesses and discovery of documents. *See* CAL. CODE REGS. tit. 8,  
22 § 20406. During this process, the mediator can communicate “informally” and off the record  
23 with the parties in order to “clarify or resolve issues.” *Id.* § 20407(a)(2).

24           55. At the conclusion of the period, unless the parties mutually agree to extend the  
25 period for another 30 days, the mediator certifies that the mediation process has been  
26 “exhausted.” CAL. LAB. CODE § 1164(c). The mediator then has 21 days to file a report with the  
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1 Board that “resolves all of the issues between the parties” and establishes the “final terms” of a  
2 collective bargaining agreement. *Id.* § 1164(d).

3 56. The mediator’s report, if not challenged by petition to the board for review,  
4 becomes a final order of the Board. *Id.* § 1164.3(b). If a party challenges by petition, it must  
5 specify the particular portion of the mediator’s report that it is challenging. *Id.* § 1164.3(a).  
6 Board review is discretionary. The Board will only accept for review portions of the petition that  
7 establish a prima facie case that a provision of the CBA was (1) unrelated to wages, hours, or  
8 other conditions of employment; (2) is based on clearly erroneous findings of material fact, or (3)  
9 is arbitrary or capricious. *Id.*

10 57. Labor Code section 1164.9, a provision of the MMC statute, provides that:

11 No court of this state, except the court of appeal or the Supreme  
12 Court, to the extent specified in this article, shall have jurisdiction to  
13 review, reverse, correct, or annul any order or decision of the board  
14 to suspend or delay the execution or operation thereof, or to enjoin,  
15 restrain, or interfere with the board in the performance of its official  
16 duties, as provided by law and the rules of court.

17 *Id.* § 1164.9.

18 58. Labor Code section 1164.5 provides that within 30 days after the order of the  
19 Board takes effect, a party may petition for review of that order in the court of appeal or the  
20 California Supreme Court. *See id.* § 1164.5.

## 21 **VII. PROCEDURAL BACKGROUND**

22 59. The UFW filed its declaration seeking MMC on March 29, 2013 (the “UFW  
23 Declaration”). *See* Ex. A. The UFW Declaration consisted of a declaration by Armando Elenes,  
24 National Vice-President of the UFW, and four exhibits. The UFW Declaration claimed that the  
25 parties had “failed” to reach an agreement for at least one year after an initial request to bargain  
26 by counting all of the time during which the Union disappeared as “failed” attempts to reach an  
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1 agreement. Similarly, the UFW Declaration pointed to unfair labor practices from 1992 that  
2 preceded even its certification as a representative of Gerawan’s agricultural workers.

3 60. Gerawan filed an answer to the Declaration (the “Gerawan Answer”) on April 8,  
4 2013. *See* Ex. B. The Gerawan Answer consisted of an answer by Gerawan counsel Ronald  
5 Barsamian, a declaration by former Gerawan negotiator John Sweet, and five exhibits.

6 61. On April 16, 2013, the Board issued its Order directing the parties to MMC. *See*  
7 Ex. C. The Order determined that the UFW Declaration met the statutory prerequisites for  
8 referral to MMC. *See* Ex. C at 149-50. The Board cited the declaration of John Sweet as  
9 evidence that “the UFW sent a letter dated July 21, 1992 to Gerawan requesting negotiations” and  
10 that the relevant facts were undisputed. *Id.*

11 62. In its Order, the Board also dismissed Gerawan’s arguments that Labor Code  
12 section 1164.11 required the one year of bargaining to mean a year of actual bargaining – and in  
13 particular bargaining in “good faith,” as required since the adoption of the ALRA. CAL. LAB.  
14 CODE § 1155.2. While conceding that the legislative history of the MMC Statute suggested that  
15 the California legislature intended the one year period to give the parties time to negotiate over an  
16 initial contract before mediation could be required, the Board contended that the “statutory  
17 language” of the statute contained no such good faith bargaining requirement, and therefore that  
18 the Union was entitled to invoke MMC despite the undisputed evidence that it had not attempted  
19 to bargain with Gerawan until October 2012, less than six months before the Union filed its  
20 declaration.

21 63. The Board also concluded that a prior finding that an employer had been found to  
22 have “committed an unfair labor practice,” no matter how remote in time, or unrelated to contract  
23 negotiations with a certified union, met the statutory prerequisites under section 1164.11(b). The  
24 Board accepted the Union’s identification of two unfair labor practice orders from 1992, even  
25 though the Board conceded, as it must, that these “ULPs” involved pre-certification conduct, and  
26 occurred 20-plus years before the Union actually made any effort at bargaining. The Board  
27 nonetheless held that an employer may be compelled into arbitration based on conduct which  
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1 occurred at a time when the Union was expressly prohibited from entering into a “legally valid  
2 collective-bargaining agreement.” CAL. LAB. CODE § 1159. The Board’s Order is clearly  
3 erroneous and in excess of its jurisdiction.

4 64. Finally, in its Order the Board refused to consider arguments that the MMC  
5 process violated Gerawan’s constitutional rights. The Board concluded that it had no authority to  
6 consider such issues – rendering Gerawan with no remedy except through court action to address  
7 such constitutional violations.

#### 8 **VIII. PRELIMINARY ALLEGATIONS**

9 65. Petitioner incorporates all previous paragraphs as if fully set forth herein.

10 66. The ALRB prejudicially abused its discretion and failed to fulfill its mandatory,  
11 non-discretionary duty to comply with the federal and California constitutions when it issued the  
12 Order directing the parties to MMC. The Order is invalid and a writ should issue pursuant to  
13 Code of Civil Procedure section 1094.5 because the Board failed to proceed in the manner  
14 required by law and its findings, determinations, and decision are not supported by the weight of  
15 the evidence. Moreover, the Board relied upon incorrect interpretations of law which are subject  
16 to *de novo* review by this Court.

17 67. Alternatively, the Order is invalid and a writ should issue pursuant to Code of  
18 Civil Procedure sections 1085 and 1086 because the Board has the clear and present legal duty to  
19 comply with the federal and California constitutions and with applicable California law, Gerawan  
20 is beneficially interested in the performance of that duty, the Board has the present ability to  
21 perform the duty, and Gerawan has no plain, speedy, or adequate remedy at law.

22 68. The Board’s Order resulted from a process where evidence was taken and  
23 discretion in the determination of facts is vested with the Board. Although the Board did not hold  
24 an in-person hearing, it took evidence from both parties in the form of declarations and exhibits,  
25 made evidentiary findings, and made a determination in light of that evidence by applying its  
26 interpretation of state law to that evidence. Under these circumstances, the Board’s evaluation of  
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1 the Union's Declaration was clearly a quasi-adjudicative process where pre-existing law (Labor  
2 Code section 1164.11) was applied to particular facts.

3 69. The ALRB exceeded its authority and failed to perform its clear duty under the  
4 state and federal constitutions by directing the parties to MMC despite that process' constitutional  
5 infirmities. Due process forbids *ex parte* communications between interested parties and  
6 decision-makers. *See Mathew Zaheri Corp., v. New Motor Vehicle Bd.*, 55 Cal. App. 4th 1305,  
7 1319 (1997) ("When an administrative adjudicator uses 'evidence' outside the record there is a  
8 denial of a fair hearing. . . . The prohibitions against improper *ex parte* communications are  
9 measures imposed to avert this kind of due process violation.").

10 70. Gerawan has no plain, speedy, or adequate remedy in the ordinary course of law.  
11 The ALRB cannot grant Gerawan an adequate remedy for its injury because (1) the MMC statute  
12 provides only for petition to the Board for discretionary review of the Board's order adopting the  
13 mediator's report, and only on narrow grounds which do not include challenges to the validity of  
14 the initial Board order directing the parties to MMC; and (2) because Gerawan raises a  
15 constitutional challenge to the MMC Statute, and as the Board acknowledged in its Order, the  
16 California Constitution bars administrative agencies from declaring a state statute  
17 unconstitutional and void. Further, by adjudicating this issue and making an unreviewable  
18 decision to compel Gerawan to the MMC process, the Board has terminated Gerawan's rights,  
19 granted under Labor Code section 1155.2(a), not to be compelled to concede a particular  
20 bargaining term or be required to accept a proposal. This protection was the basis on which the  
21 NLRA (the model for the ALRA) was based. *See NLRB v. Jones & Laughlin*, 301 U.S. 1, 45  
22 (1937). The Board has adjudicated that Gerawan now loses that right and must submit to a  
23 process where it is compelled to accept terms of an agreement imposed upon it.

24 71. Without immediate review, Gerawan will suffer irreparable injury. There is no  
25 clear avenue of review of the Board's Order, which is immediately executing. Gerawan must  
26 immediately begin participating in the unconstitutional MMC process. If the Board's Order is  
27 not set aside by a writ, Gerawan will suffer irreparable injury via the imposition of a facially  
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1 defective process, and will be forced to expend massive amounts of funds undergoing a litigation-  
2 like “hybrid mediation/arbitration process” that includes written discovery and presentation of  
3 witnesses and which deprives Gerawan of its rights, and for which there is no remedy at law.

4 **FIRST CAUSE OF ACTION**

5 **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

6 **THE BOARD EXCEEDED ITS AUTHORITY UNDER LABOR CODE SECTION 1164.11**  
7 **(FAILURE TO REACH AGREEMENT FOR AT LEAST ONE YEAR)**

8 72. Gerawan incorporates all previous paragraphs as though set forth in full herein.

9 73. Respondents are charged with the duty of determining whether a party has  
10 satisfied the prerequisites for MMC under the ALRA and with complying with the Federal  
11 Constitution.

12 74. Pursuant to California Labor Code sections 1164(b) and 1164.11, and California  
13 Code of Regulations title 8, § 20402, the Board was required to take evidence and exercise  
14 discretion in making a determination as to whether the UFW had satisfied the prerequisites to  
15 MMC.

16 75. On March 29, 2013, the UFW filed a Declaration with the Board requesting  
17 MMC, which consisted of a declaration based on personal knowledge by a national vice-president  
18 of the Union, and several exhibits. On April 8, 2013, Gerawan filed an Answer with the Board to  
19 the UFW’s Declaration, consisting of a declaration based on personal knowledge by Gerawan’s  
20 counsel, a declaration by a former negotiator for Gerawan, and several exhibits.

21 76. On April 16, 2013, the Board issued its Order directing the parties to MMC. In  
22 the Order, it determined that the UFW had satisfied the statutory prerequisites for MMC. In so  
23 doing, the Board cited evidence submitted by the parties, including the above mentioned  
24 declaration by Gerawan’s former negotiator. In reaching its decision, therefore, the Board took  
25 evidence submitted by the parties, ruled on that evidence, and made a discretionary determination  
26 of the facts on the basis of that evidence. The nature of the Board’s action was therefore that of  
27 applying existing facts to existing law.  
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1           77.     The Board's Order is final and not subject to further administrative review under  
2 the terms of the Labor Code. While the Board characterizes the Order as "non-final," there is no  
3 process which provides for further administrative review or action regarding the Board's  
4 determination to compel Gerawan to the MMC process. Further, the Board asserts that it will  
5 not, at any time, have authority to consider the constitutionality of the MMC process.

6           78.     Labor Code section 1164.11 contains three factual predicates that must be found to  
7 compel a party to submit to the MMC process. The first of these is that a declaration requesting  
8 the MMC process must show that "the parties have failed to reach agreement for at least one year  
9 after the date on which the labor organization made its initial request to bargain." CAL. LAB.  
10 CODE § 1164.11(a).

11           79.     The Union contacted Gerawan on October 12, 2012 to begin negotiations. It  
12 subsequently characterized this communication as a "first request" to bargain. The Union  
13 submitted its declaration requesting imposition of the MMC process on March 29, 2013, less than  
14 one year after October 12, 2012. Thus, the declaration and demand for MMC by the Union was  
15 facially deficient under the terms of Labor Code section 1164.11(a).

16           80.     In its demand, however, the Union changed its story and stated that it made its  
17 initial request to bargain in 1992. Gerawan pointed out in response to the demand that the Union  
18 could not rely on the 1992 request because the Union had simply disappeared in 1995 and made  
19 no good faith effort to bargain (or any effort of any kind) until October 2012, and thus could not  
20 rely upon the 1992 request for purposes of section 1164.11(a).

21           81.     The Board made the legal determination that the Union need not show any attempt  
22 at good faith bargaining for one year, or indeed any efforts at actual bargaining at any time to  
23 invoke the MMC procedure. The Board expressly based its holding on a legal interpretation of  
24 the Labor Code.

25           82.     The Board's interpretation of Labor Code section 1164.11(a) is incorrect, and  
26 moreover, not entitled to deference in this Court. Labor Code section 1164.11(a) requires a  
27 showing that "the parties **failed** to reach agreement for at least one year . . . ." The legislature's  
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1 use of the word “failed” necessarily requires a showing that the parties (or at least the party  
2 requesting the MMC procedure) actually tried to reach agreement for at least one year. The  
3 Board’s interpretation impermissibly rewrites the statutory language. Further, the Board  
4 conceded in its Order that its interpretation was contrary to the clearly expressed intent of the  
5 legislature in the legislative history to section 1164, *et seq.*, and with Labor Code section  
6 1155.2(a).

7 83. In ordering Gerawan to submit to the MMC process, the Board exceeded its  
8 statutory authority by failing to properly apply the express language and purpose of the Labor  
9 Code and by relying instead on an incorrect statutory interpretation.

10 84. The Respondents have the clear and present legal duty to apply the provisions of  
11 the Labor Code correctly and to apply the statute as enacted, rather than substitute their own  
12 incorrect interpretation.

13 85. Gerawan is beneficially interested in the performance of the Respondents’ duty in  
14 that it has a right not to be compelled to submit to the MMC process under an incorrect  
15 application of California law.

16 86. The Respondents have the present ability to perform this duty.

17 87. The Respondents failed to perform the duty or have abused their discretion in  
18 performing the duty as set forth above.

19 88. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
20 law other than the issuance by this Court of a writ of mandate.

## 21 **SECOND CAUSE OF ACTION**

### 22 **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

### 23 **THE BOARD EXCEEDED ITS AUTHORITY UNDER LABOR CODE SECTION 1164.11**

#### 24 **(FINDING OF UNFAIR LABOR PRACTICES)**

25 89. Gerawan incorporates all previous paragraphs as though set forth in full herein.

26 90. Labor Code section 1164.11 contains three factual predicates that must be found to  
27 compel a party to submit to the MMC process. The second of these is that a declaration  
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1 requesting the MMC process must show that “the employer has committed an unfair labor  
2 practice.” CAL. LAB. CODE § 1164.11(b).

3 91. The Union submitted its Declaration requesting imposition of the MMC process  
4 on March 29, 2013. In its demand, it identified two unfair labor practice decisions of the Board  
5 against Gerawan from 1992. Both of these decisions indisputably concern charges which predate  
6 the Union’s certification as a representative of any Gerawan employees. Neither concern a  
7 failure or refusal to negotiate with a certified labor organization. They also predate any efforts to  
8 bargain with Gerawan, even if the Union’s post-certification demand to bargain in 1992 was  
9 considered the relevant “initial request to bargain.”

10 92. The Union could not cite a single decision by the ALRB that Gerawan committed  
11 any unfair labor practices at any time after the Union was certified in 1992. Gerawan objected to  
12 the reliance on these remote unfair labor practices, unrelated to any effort to actually negotiate a  
13 collective bargaining agreement.

14 93. The Board made the legal determination that the Union need not show any relation  
15 in time or fact between the identified unfair labor practices and failed efforts to reach a collective  
16 bargaining agreement. The Union did not dispute that the unfair labor practices predated its  
17 certification as a bargaining representative, and had no relation to efforts to reach a collective  
18 bargaining agreement. The Board expressly based its holding on a legal interpretation of the  
19 Labor Code.

20 94. The Board’s interpretation of Labor Code section 1164.11(b) is incorrect, and  
21 moreover, not entitled to deference in this Court. The Board itself has previously recognized that  
22 section 1164 is a remedial measure designed to address improper efforts by employers to prevent  
23 a collective bargaining agreement. The Board’s interpretation of section 1164.11(b), however,  
24 would vitiate that purpose and permit a Union to compel a party to mediation without ever having  
25 bargained in good faith and without any showing that the employer obstructed such bargaining in  
26 any way. The Board’s interpretation is nonsensical and incorrect.

1           95.     In ordering Gerawan to submit to the MMC process, the Board has exceeded its  
2 statutory authority by failing to properly apply the express language and purpose of the Labor  
3 Code and by relying instead on an incorrect statutory interpretation.

4           96.     The Respondents have the clear and present legal duty to apply the provisions of  
5 the Labor Code correctly and to apply the statute as enacted, rather than substitute their own  
6 incorrect interpretation.

7           97.     Gerawan is beneficially interested in the performance of the Respondents' duty in  
8 that it has a right not to be compelled to submit to the MMC process under an incorrect  
9 application of California law.

10          98.     The Respondents have the present ability to perform this duty.

11          99.     The Respondents failed to perform the duty or have abused their discretion in  
12 performing the duty as set forth above.

13          100.    Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
14 law other than the issuance by this Court of a writ of mandate.

15                                   **THIRD CAUSE OF ACTION**

16                   **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

17           **THE BOARD EXCEEDED ITS AUTHORITY UNDER LABOR CODE SECTION 1164.11**

18                                   **(ABANDONMENT BY THE UNION)**

19          101.    Gerawan incorporates all previous paragraphs as though set forth in full herein.

20          102.    Labor Code section 1164 provides that a labor organization certified as the  
21 exclusive bargaining agent of a bargaining unit of agricultural employees may file a demand for  
22 the MMC process. *See* CAL. LAB. CODE § 1164(a).

23          103.    The Union submitted its declaration requesting imposition of the MMC process on  
24 March 29, 2013.

25          104.    Prior to its initial request to bargain on October 12, 2012, however, the Union  
26 abandoned Gerawan's agricultural employees by its disappearance for nearly twenty years. This  
27 disappearance and abandonment of Gerawan's workers by the Union prevents it from properly  
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1 claiming to be the certified exclusive bargaining agent of Gerawan's agricultural employees. The  
2 Union's abandonment of Gerawan's workers forfeited its status as their representative and  
3 disqualified it from invoking the MMC process under the provisions of the Labor Code.

4 105. The Board made the legal determination that the Union's abandonment of  
5 Gerawan's workers and forfeiting of its status as their representative was irrelevant to the Union's  
6 invocation of the MMC process. The Board expressly based its holding on a legal interpretation  
7 of the Labor Code.

8 106. In derogation of its power and obligation to suspend, revoke, or limit its  
9 certification of the UFW for its failure to comply with its statutory and fiduciary obligations  
10 attendant to the certification's grant of exclusivity, the Board determined that the UFW is the  
11 certified bargaining representative of Gerawan's workers.

12 107. The Board's interpretation of the Labor Code is incorrect, and moreover, not  
13 entitled to deference in this Court. A labor organization that abandons the workers it purports to  
14 represent, particularly as egregiously as was the case here, is not properly considered their  
15 certified representative for purposes of invoking the MMC process.

16 108. In ordering Gerawan to submit to the MMC process, the Board has exceeded its  
17 statutory authority by failing to properly apply the express language and purpose of the Labor  
18 Code and by relying instead on an incorrect statutory interpretation.

19 109. The Respondents have the clear and present legal duty to apply the provisions of  
20 the Labor Code correctly and to apply the statute as enacted, rather than substitute their own  
21 incorrect interpretation.

22 110. Gerawan is beneficially interested in the performance of the Respondents' duty in  
23 that it has a right not to be compelled to submit to the MMC process under an incorrect  
24 application of California law.

25 111. The Respondents have the present ability to perform this duty.

26 112. The Respondents failed to perform the duty or have abused their discretion in  
27 performing the duty as set forth above.  
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1 113. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
2 law other than the issuance by this Court of a writ of mandate.

3 **FOURTH CAUSE OF ACTION**

4 **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

5 **LABOR CODE SECTION 1164 PROCEDURES VIOLATE**

6 **THE RIGHT TO DUE PROCESS (U.S. CONST. AMEND. 5, 14)**

7 **(IMPROPER EX PARTE COMMUNICATIONS)**

8 114. Gerawan incorporates all previous paragraphs as if fully set forth herein.

9 115. The MMC process as constituted under Labor Code section 1164 and the  
10 regulations implementing it serves to deprive Petitioner of its rights to procedural due process  
11 under the Fifth and Fourteenth Amendments to the United States Constitution.

12 116. The MMC process involves what the California Court of Appeal has characterized  
13 as “compulsory interest arbitration” in which a single arbitrator (identified in the statute as a  
14 mediator) hears evidence from both an agricultural employer and a certified employee  
15 representative (union), and issues a report setting the terms of a collective bargaining agreement  
16 between the employer and its employees. In preparing this report, the Labor Code requires the  
17 “mediator” to take evidence on the record, to make findings and to issue a report that supports  
18 those findings based upon the evidence in the record. The parties to this process propound  
19 discovery, and may offer both documentary and testamentary evidence from both lay and expert  
20 witnesses to the “mediator.”

21 117. In addition to the “mediator’s” role in deciding this interest arbitration, the  
22 “mediator” is also required to perform a more traditional mediation function with the parties, in  
23 which the mediator engages in *ex parte* communications with the respective parties for the  
24 purpose of inducing them to reach agreement on the terms of a collective bargaining agreement.  
25 Further, in addition to the “mediator’s” role as a decision-maker, the “mediator” also engages in  
26 investigative conduct to seek out facts and information from the parties. This investigatory role is  
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1 inconsistent with the role of a neutral decision-maker, and the combination of the two violates the  
2 constitutional guarantees of procedural due process.

3 118. The Labor Code and the regulations implementing it specifically contemplate this  
4 dual role of mediator and arbitrator residing in the same individual who is not only permitted, but  
5 essentially required, to conduct *ex parte* communications with the parties prior to rendering a  
6 decision in the form of a report.

7 119. A proceeding in which a decision-maker engages in *ex parte* communications with  
8 one or more parties to a proceeding, where those contacts and the process are compulsory and not  
9 by consent, is inherently unfair, and fails to guarantee the parties the procedural due process  
10 required by the Federal Constitution.

11 120. The ALRB has ordered Petitioner to participate in this unconstitutional MMC  
12 process over Petitioner's objections in an Order dated April 16, 2013.

13 121. The ALRB's April 16, 2013 Order directs Petitioner to participate in this process  
14 and is not subject to any further agency review prior to Petitioner actually undergoing this  
15 unconstitutional process.

16 122. The ALRB's April 16, 2013 Order explicitly states that it could not and did not  
17 consider Petitioner's right to due process.

18 123. Accordingly, the April 16, 2013 Order acts to violate Petitioner's right to  
19 procedural due process and must not be implemented.

20 124. The Board's Order directing the parties to MMC should be set aside because the  
21 Board abused its discretion in failing to comply with the U.S. Constitution by ordering Gerawan  
22 to participate in a process that violates its constitutional due process rights.

23 125. The Respondents have the clear and present legal duty to apply the provisions of  
24 the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

25 126. Gerawan is beneficially interested in the performance of the Respondents' duty in  
26 that it has a right not to be compelled to submit to the MMC process in violation of its  
27 constitutional rights to due process.  
28

127. The Respondents have the present ability to perform this duty.

128. The Respondents failed to perform the duty or have abused their discretion in performing the duty as set forth above.

129. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the law other than the issuance by this Court of a writ of mandate.

## **FIFTH CAUSE OF ACTION**

**PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

## LABOR CODE SECTION 1164 PROCEDURES VIOLATE

## THE RIGHT TO DUE PROCESS (Cal. Const. art. I, § 7)

**(IMPROPER EX PARTE COMMUNICATIONS)**

130. Gerawan incorporates all previous paragraphs as if fully set forth herein.

131. The MMC process as constituted under Labor Code section 1164 and the regulations implementing it serves to deprive Petitioner of its rights to procedural due process under article I, section 7 of the California Constitution.

132. The MMC process involves what the California Court of Appeal has characterized as “compulsory interest arbitration” in which a single arbitrator (identified in the statute as a mediator) hears evidence from both an agricultural employer and a certified employee representative (union), and issues a report setting the terms of a collective bargaining agreement between the employer and its employees. In preparing this report, the Labor Code requires the “mediator” to take evidence on the record, to make findings and to issue a report that supports those findings based upon the evidence in the record. The parties to this process propound discovery, and may offer both documentary and testimonial evidence from both lay and expert witnesses to the “mediator.”

133. In addition to the “mediator’s” role in deciding this interest arbitration, the “mediator” is also required to perform a more traditional mediation function with the parties, in which the mediator engages in *ex parte* communications with the respective parties for the purpose of inducing them to reach agreement on the terms of a collective bargaining agreement.

1 Further, in addition to the “mediator’s” role as a decision-maker, the “mediator” also engages in  
2 investigative conduct to seek out facts and information from the parties. This investigatory role is  
3 inconsistent with the role of a neutral decision-maker, and the combination of the two violates the  
4 constitutional guarantees of procedural due process.

5 134. The Labor Code and the regulations implementing it specifically contemplate this  
6 dual role of mediator and arbitrator residing in the same individual who is not only permitted, but  
7 essentially required, to conduct *ex parte* communications with the parties prior to rendering a  
8 decision in the form of a report.

9 135. A proceeding in which a decision-maker engages in *ex parte* communications with  
10 one or more parties to a proceeding, where those contacts and the process are compulsory and not  
11 by consent, is inherently unfair, and fails to guarantee the parties the procedural due process  
12 required by the California Constitution.

13 136. The ALRB has ordered Petitioner to participate in this unconstitutional MMC  
14 process over Petitioner’s objections in an Order dated April 16, 2013.

15 137. The ALRB’s April 16, 2013 Order directs Petitioner to participate in this process  
16 and is not subject to any further agency review prior to Petitioner actually undergoing this  
17 unconstitutional process.

18 138. The ALRB’s April 16, 2013 Order explicitly states that it could not and did not  
19 consider Petitioner’s right to due process.

20 139. Accordingly, the April 16, 2013 Order acts to violate Petitioner’s right to  
21 procedural due process and must not be implemented.

22 140. The Board’s Order directing the parties to MMC should be set aside because the  
23 Board abused its discretion in failing to comply with the state constitution by ordering Gerawan  
24 to participate in a process that violates its constitutional due process rights.

25 141. The Respondents have the clear and present legal duty to apply the provisions of  
26 the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

1           142.   Gerawan is beneficially interested in the performance of the Respondents' duty in  
2 that it has a right not to be compelled to submit to the MMC process in violation of its  
3 constitutional rights to due process.

4           143.   The Respondents have the present ability to perform this duty.

5           144.   The Respondents failed to perform the duty or have abused their discretion in  
6 performing the duty as set forth above.

7           145.   Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
8 law other than the issuance by this Court of a writ of mandate.

9                                   **SIXTH CAUSE OF ACTION**

10                   **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

11                   **LABOR CODE SECTION 1164 PROCEDURES VIOLATE THE RIGHT TO DUE**

12                                   **PROCESS ((U.S. CONST. AMEND. 5, 14)**

13                                   **(NO OPPORTUNITY FOR FAIR REVIEW)**

14           146.   Gerawan incorporates all previous paragraphs as though set forth in full herein.

15           147.   The Labor Code contemplates that the MMC process will include "off-the-record"  
16 communications with the "mediator."

17           148.   These "off-the-record" communications are not to form the basis for the  
18 "mediator's" report.

19           149.   The Labor Code and the implementing regulations provide that these  
20 communications are mediation communications within the scope of Evidence Code section 1119,  
21 and thus not subject to discovery by an adverse party. Further, they may not be introduced into  
22 evidence for any purpose.

23           150.   The regulations implementing Labor Code section 1164 provide for a narrow  
24 exception to Evidence Code section 1119 in order to prove corruption of the "mediator." This  
25 exception, however, does not appear in the Labor Code itself, but only in the implementing  
26 regulations, and is therefore ineffective because administrative regulations cannot override or  
27 create an exception to a statutory enactment such as Evidence Code section 1119.  
28



1           151. Even if the implementing regulations' exception to Evidence Code section 1119  
2 were effective, it would not permit the discovery by one party of "off-the-record"  
3 communications the "mediator" had with the other party, nor would it allow any party to  
4 introduce evidence of such "off-the-record" communications to, for example, challenge the  
5 "mediator's" report for improperly relying on such communications.

6           152. Thus, Labor Code section 1164 and its implementing regulations create a process  
7 resulting in a fundamental "Catch-22" for participants: they may be obliged to have "off-the-  
8 record" communications with the "mediator" in which all manner of improprieties may occur, yet  
9 are forbidden by law to introduce evidence of these improprieties to challenge the resulting  
10 decision because all such communications are veiled behind the mediation protection of the  
11 Evidence Code.

12           153. This system inherently denies participants in the MMC process generally, and  
13 Petitioner specifically, of their fundamental due process right to a fair procedure with an  
14 appropriate mechanism for review of an adverse decision.

15           154. This denial of a fair process violates the Federal Constitution.

16           155. Additionally, the combination of investigative and decision-making functions  
17 discussed previously requires, to even potentially satisfy constitutional due process requirements,  
18 that such process be subject to neutral, *de novo* review. The MMC process, however, does not  
19 provide any such review mechanism, further impinging on Gerawan's constitutional rights.

20           156. The Respondents have the clear and present legal duty to apply the provisions of  
21 the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

22           157. Gerawan is beneficially interested in the performance of the Respondents' duty in  
23 that it has a right not to be compelled to submit to the MMC process in violation of its  
24 constitutional rights to due process.

25           158. The Respondents have the present ability to perform this duty.

26           159. The Respondents failed to perform the duty or have abused their discretion in  
27 performing the duty as set forth above.  
28

1           160.   Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
2 law other than the issuance by this Court of a writ of mandate.

3           161.   Accordingly, the ALRB's Order of April 16, 2013 directs Gerawan to participate  
4 in an unconstitutional process and must not be implemented.

5                                   **SEVENTH CAUSE OF ACTION**

6                   **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

7                   **LABOR CODE SECTION 1164 PROCEDURES VIOLATE THE RIGHT TO DUE**

8                                   **PROCESS (Cal. Const. art. I, § 7)**

9                                   **(NO OPPORTUNITY FOR FAIR REVIEW)**

10           162.   Gerawan incorporates all previous paragraphs as though set forth in full herein.

11           163.   The Labor Code contemplates that the MMC process will include "off-the-record"  
12 communications with the "mediator."

13           164.   These "off-the-record" communications are not to form the basis for the  
14 "mediator's" report.

15           165.   The Labor Code and the implementing regulations provide that these  
16 communications are mediation communications within the scope of Evidence Code section 1119,  
17 and thus not subject to discovery by an adverse party. Further, they may not be introduced into  
18 evidence for any purpose.

19           166.   The regulations implementing Labor Code section 1164 provide for a narrow  
20 exception to Evidence Code section 1119 in order to prove corruption of the "mediator." This  
21 exception, however, does not appear in the Labor Code itself, but only in the implementing  
22 regulations, and is therefore ineffective because administrative regulations cannot override or  
23 create an exception to a statutory enactment such as Evidence Code section 1119.

24           167.   Even if the implementing regulations' exception to Evidence Code section 1119  
25 were effective, it would not permit the discovery by one party of "off-the-record"  
26 communications the "mediator" had with the other party, nor would it allow any party to  
27  
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1 introduce evidence of such “off-the-record” communications to, for example, challenge the  
2 “mediator’s” report for improperly relying on such communications.

3 168. Thus, Labor Code section 1164 and its implementing regulations create a process  
4 resulting in a fundamental “Catch-22” for participants: they may be obliged to have “off-the-  
5 record” communications with the “mediator” in which all manner of improprieties may occur, yet  
6 are forbidden by law to introduce evidence of these improprieties to challenge the resulting  
7 decision because all such communications are veiled behind the mediation protection of the  
8 Evidence Code.

9 169. This system inherently denies participants in the MMC process generally, and  
10 Petitioner specifically, of their fundamental due process right to a fair procedure with an  
11 appropriate mechanism for review of an adverse decision.

12 170. This denial of a fair process violates the California Constitution.

13 171. Additionally, the combination of investigative and decision-making functions  
14 discussed previously requires, to even potentially satisfy constitutional due process requirements,  
15 that such process be subject to neutral, *de novo* review. The MMC process, however, does not  
16 provide any such review mechanism, further impinging on Gerawan’s constitutional rights.

17 172. The Respondents have the clear and present legal duty to apply the provisions of  
18 the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

19 173. Gerawan is beneficially interested in the performance of the Respondents’ duty in  
20 that it has a right not to be compelled to submit to the MMC process in violation of its  
21 constitutional rights to due process.

22 174. The Respondents have the present ability to perform this duty.

23 175. The Respondents failed to perform the duty or have abused their discretion in  
24 performing the duty as set forth above.

25 176. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the  
26 law other than the issuance by this Court of a writ of mandate.

1 177. Accordingly, the ALRB's Order of April 16, 2013 directs Gerawan to participate  
2 in an unconstitutional process and must not be implemented.

3 **EIGHTH CAUSE OF ACTION**

4 **PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

5 **LABOR CODE SECTION 1164 PROCEDURES VIOLATE THE RIGHT TO DUE**

6 **PROCESS (U.S. CONST. AMEND. 5, 14)**

7 **(LACK OF IMPARTIAL DECISION-MAKER)**

8 178. Gerawan incorporates all previous paragraphs as though set forth in full herein.

9 179. The Labor Code provides that a mediator will be selected for the MMC process (if  
10 the parties do not separately agree on a mediator) by providing a list of nine mediators from the  
11 California State Mediation and Conciliation Service (a part of the California Department of  
12 Industrial Relations) to the parties. The parties then may select a mediator by striking names  
13 from the list until a mediator is chosen by process of elimination.

14 180. This selection process denies parties of due process rights under the Federal  
15 Constitution to a fair and neutral decision-maker without an appearance of bias. If more than half  
16 of the designees are in some way biased against a party or its position, that party is nonetheless  
17 compelled to participate in a mediation with such a biased mediator because they will have no  
18 ability to eliminate more than 4 of the nine potential mediator candidates.

19 181. The Respondents have the clear and present legal duty to apply the provisions of  
20 the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

21 182. Gerawan is beneficially interested in the performance of the Respondents' duty in  
22 that it has a right not to be compelled to submit to the MMC process in violation of its  
23 constitutional rights to due process.

24 183. The Respondents have the present ability to perform this duty.

25 184. The Respondents failed to perform the duty or have abused their discretion in  
26 performing the duty as set forth above.

185. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the law other than the issuance by this Court of a writ of mandate.

186. Accordingly, the ALRB's Order of April 16, 2013 directs Gerawan to participate in an unconstitutional process and must not be implemented.

**NINTH CAUSE OF ACTION**

**PETITION FOR WRIT OF MANDATE (Cal. Civ. Proc. Code §§ 1094.5, 1085)**

**LABOR CODE SECTION 1164 PROCEDURES VIOLATE THE RIGHT TO DUE**

**PROCESS (Cal. Const. art. I, § 7)**

**(LACK OF IMPARTIAL DECISION-MAKER)**

187. Gerawan incorporates all previous paragraphs as though set forth in full herein.

188. The Labor Code provides that a mediator will be selected for the MMC process (if the parties do not separately agree on a mediator) by providing a list of nine mediators from the California State Mediation and Conciliation Service (a part of the California Department of Industrial Relations) to the parties. The parties then may select a mediator by striking names from the list until a mediator is chosen by process of elimination.

189. This selection process denies parties of due process rights under the California Constitution to a fair and neutral decision-maker without an appearance of bias. If more than half of the designees are in some way biased against a party or its position, that party is nonetheless compelled to participate in a mediation with such a biased mediator because they will have no ability to eliminate more than 4 of the nine potential mediator candidates.

190. The Respondents have the clear and present legal duty to apply the provisions of the Labor Code correctly and to avoid imposing unconstitutional processes upon Gerawan.

191. Gerawan is beneficially interested in the performance of the Respondents' duty in that it has a right not to be compelled to submit to the MMC process in violation of its constitutional rights to due process.

192. The Respondents have the present ability to perform this duty.

193. The Respondents failed to perform the duty or have abused their discretion in performing the duty as set forth above.

194. Gerawan has no plain, speedy, and adequate remedy in the ordinary course of the law other than the issuance by this Court of a writ of mandate.

195. Accordingly, the ALRB's Order of April 16, 2013 directs Gerawan to participate in an unconstitutional process and must not be implemented.

### TENTH CAUSE OF ACTION

**FOR A DECLARATION THAT LABOR CODE SECTION 1164, ET SEQ.  
IS UNCONSTITUTIONAL AND FOR INJUNCTIVE RELIEF (U.S. CONST. AM. 5, 14)**

196. Gerawan incorporates all previous paragraphs as though set forth in full herein.

197. Under Code of Civil Procedure section 1060, Gerawan is an interested person entitled to declaratory relief addressing its rights and duties and resolving the actual controversy between Gerawan and Defendants over the constitutionality of the Mandatory Mediation and Conciliation process mandated under Labor Code section 1164, *et seq.*

198. Labor Code section 1164, *et seq.* imposes a Mandatory Mediation and Conciliation process on parties that deprives them of due process rights guaranteed under the United States Constitution. Defendant Board, through its Members and Executive Secretary, implements and enforces this unconstitutional process to Gerawan's detriment.

199. As set forth previously, the MMC process mandated by the Labor Code improperly combines the elements of mediation and arbitration in a single decision-maker who engages in improper *ex parte* communications with the parties, rendering the process fundamentally unfair. Further, the MMC process is not subject to adequate and fair review both because it does not provide adequate procedures for review, including a *de novo* review by a neutral decision-maker in light of the combined investigative and decision-making roles of the “mediator,” and because it cloaks “off-the-record” communications with the decision-maker behind the mediation privilege of Evidence Code section 1119, preventing a fair and adequate review of the “mediator’s” decision. Finally, the MMC process does not provide adequate

1 protections to insure a fair and neutral decision-maker through its improper appointment  
2 procedure for the “mediator.” Each of these grounds independently is sufficient to render the  
3 MMC process fatally unconstitutional under the Federal Constitution.

4 200. For the foregoing reasons, Labor Code section 1164, *et seq.* must be declared  
5 facially unconstitutional and void.

6 **ELEVENTH CAUSE OF ACTION**

7 **FOR A DECLARATION THAT LABOR CODE SECTION 1164, ET SEQ.**

8 **IS UNCONSTITUTIONAL AND FOR INJUNCTIVE RELIEF (Cal. Const. art. I, § 7)**

9 201. Gerawan incorporates all previous paragraphs as though set forth in full herein.

10 202. Under Code of Civil Procedure section 1060, Gerawan is an interested person  
11 entitled to declaratory relief addressing its rights and duties and resolving the actual controversy  
12 between Gerawan and Defendants over the constitutionality of the Mandatory Mediation and  
13 Conciliation process mandated under Labor Code section 1164, *et seq.*

14 203. Labor Code section 1164, *et seq.* imposes a Mandatory Mediation and  
15 Conciliation process on parties that deprives them of due process rights guaranteed under the  
16 California Constitution. Defendant Board, through its Members and Executive Secretary,  
17 implements and enforces this unconstitutional process to Gerawan’s detriment.

18 204. As set forth previously, the MMC process mandated by the Labor Code  
19 improperly combines the elements of mediation and arbitration in a single decision-maker who  
20 engages in improper *ex parte* communications with the parties, rendering the process  
21 fundamentally unfair. Further, the MMC process is not subject to adequate and fair review both  
22 because it does not provide adequate procedures for review, including a *de novo* review by a  
23 neutral decision-maker in light of the combined investigative and decision-making roles of the  
24 “mediator,” and because it cloaks “off-the-record” communications with the decision-maker  
25 behind the mediation privilege of Evidence Code section 1119, preventing a fair and adequate  
26 review of the “mediator’s” decision. Finally, the MMC process does not provide adequate  
27 protections to insure a fair and neutral decision-maker through its improper appointment  
28

1 procedure for the “mediator.” Each of these grounds independently is sufficient to render the  
2 MMC process fatally unconstitutional under the California Constitution.

3 205. For the foregoing reasons, Labor Code section 1164, *et seq.* must be declared  
4 facially unconstitutional and void.

5 **TWELFTH CAUSE OF ACTION**

6 **FOR A DECLARATION THAT LABOR CODE SECTION 1164.9**

7 **IS UNCONSTITUTIONAL (Cal. Const. art. VI, § 10)**

8 206. Gerawan incorporates all previous paragraphs as though set forth in full herein.

9 207. Under Code of Civil Procedure section 1060, Gerawan is an interested person  
10 entitled to declaratory relief addressing its rights and duties and resolving the actual controversy  
11 between Gerawan and Defendants over the constitutionality of Labor Code section 1164.9.

12 208. Labor Code section 1164.9 purports to strip the Superior Court of all jurisdiction  
13 to review actions by the Board pursuant to a writ of mandate. Defendant Board, through its  
14 Members and Executive Secretary, implements and enforces this unconstitutional provision to  
15 Gerawan’s detriment.

16 209. Labor Code section 1164.9 provides that “No court of this state, except the court  
17 of appeal or the Supreme Court, to the extent specified in this article, shall have jurisdiction to  
18 review, reverse, correct, or annul any order or decision of the board to suspend or delay the  
19 execution or operation thereof, or to enjoin, restrain, or interfere with the board in the  
20 performance of its official duties, as provided by law and the rules of court.”

21 210. Article VI, section 10 of the California Constitution provides that “The Supreme  
22 Court, courts of appeal, superior courts, and their judges . . . also have original jurisdiction in  
23 proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition.”  
24 Further, article VI, section 10 provides that “Superior Courts have original jurisdiction in all  
25 causes except those given by statute to other trial courts.”

26 211. Labor Code section 1164.9 purports to withdraw from the Superior Court the  
27 original jurisdiction in proceedings for extraordinary relief. The California Constitution does not  
28



1 contain a provision conferring the power to withdraw such jurisdiction from the Superior Court in  
2 the case of actions of the Agricultural Labor Relations Board.

3 212. By expressly limiting the jurisdiction of the courts of the state of California to  
4 petitions for review solely in the court of appeal and the Supreme Court, the legislature purports  
5 to strip the Superior Court of its original jurisdiction to hear, for example, petitions for writ of  
6 mandate regarding actions by the ALRB.

7 213. This attempt to strip away jurisdiction violates the California Constitution and is  
8 therefore invalid.

9 214. For the foregoing reasons, Labor Code section 1164.9. must be declared facially  
10 unconstitutional and void.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Gerawan prays:

13 1. For a peremptory writ of mandate, writ of prohibition, or such other alternative writ  
14 as the Court deems appropriate, directing the Board to set aside its Order directing the parties to  
15 mandatory mediation and conciliation, and to proceed in a manner required by law.

16 2. For a declaration that California Labor Code section 1164, *et seq.* is facially  
17 unconstitutional and void.

18 3. For a declaration that California Labor Code section 1164.9 is facially  
19 unconstitutional and void.

20 4. For a stay of the Board's decision directing the parties to mandatory mediation and  
21 conciliation pending the judgment of this Court, or until the filing of a notice of appeal from the  
22 judgment or until the expiration of the time for filing the notice, whichever occurs first.

23 5. For costs incurred herein.  
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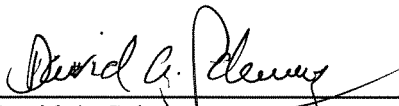
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- 6. For preliminary and permanent injunctive relief.
- 7. For such other, further and additional relief as the Court may deem just and proper.

Dated: May 3, 2013

IRELL & MANELLA LLP

GEORGESON, BELARDINELLI AND  
NOYES

By:   
David A. Schwarz

Attorneys for Petitioner/Plaintiff Gerawan  
Farming, Inc.

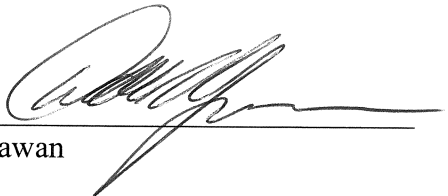
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**VERIFICATION**

I, Dan Gerawan, am the president of Gerawan Farming, Inc., a California corporation and the Petitioner/Plaintiff in this proceeding. I am authorized to make this verification on behalf of Gerawan Farming, Inc. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and the factual matters stated in it are true of my own knowledge or based upon information and belief where identified.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 2, 2013, at Fresno, California.

  
\_\_\_\_\_  
Dan Gerawan